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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIO GARCIA GONZALES,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-72189

Agency No. A079-521-470

MEMORANDUM^{*}On Petition for Review of an Order of the
Board of Immigration AppealsSubmitted October 13, 2009^{**}

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Mario Garcia Gonzales, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for cancellation of removal.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence the agency's continuous physical presence determination, *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 618 (9th Cir. 2006), and we review de novo claims of constitutional violations in immigration proceedings, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

Substantial evidence supports the agency's determination that Garcia Gonzales did not meet the continuous physical presence requirement where he testified that he departed the United States for Mexico in 1992 for over one year. *See* 8 U.S.C. § 1229b(d)(2) (departure of greater than 90 days breaks continuous physical presence).

Garcia Gonzales' contention that the agency's application of the ten-year continuous physical presence requirement violated his due process rights is unavailing. *See Padilla-Padilla v. Gonzales*, 463 F.3d 972, 978-79 (9th Cir. 2006).

We do not consider Garcia Gonzales' contentions regarding hardship and moral character because his failure to establish continuous physical presence is dispositive. *See* 8 U.S.C. § 1229b(b)(1)(A).

PETITION FOR REVIEW DENIED.